IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3171/07
Vivek Tiwari Vs. ADJ No.3, Kota & Ors.

18.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Ravi Kasliwal for petitioner.

Heard learned counsel for the petitioner.

This writ petition has been filed by the petitioner Vivek Tiwari against the order dated 19.4.2007 whereby his application under Section 50(2), 51, 52, 53 & Section 7 CPC raising objections to the execution of the judgment and decree passed by the Court of Additional District Judge No.3, Kota in regular Civil Suit No.58/04 dated 1.6.2004 was rejected.

Contention of the learned counsel for the petitioner is that the decree which has been passed by the trial court with regard to recovery of the amount, should not be executed against his personal property because the amount of loan has been taken by his father and therefore it may be recovered from the property of his father or from such property which are inherited by the petitioner in the nature of ancestral. Learned counsel in respect of his arguments relied on the provision of Section 50 CPC and argued that the said section categorically provides that where a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the

legal representative of the deceased and further that where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his share hand and has not been disposed of. The learned executing court however rejected the application on the premise that the petitioner along with his other brothers has filed a regular First Appeal before this Court and this Court by interim order dated 28.4.06 directed that the execution of the decree shall remain stayed provided the appellants deposit 50% of the decreetal amount within four weeks and furnish solvent surety for remaining 50% to the satisfaction of the executing court. Neither of the directions were complied

with by the petitioner and for that matter the other appellants in that appeal. Case file of the First Appeal was called for. A perusal of the judgment impugned therein reveals that Vivek Tiwari along with his mother Geeta Tiwari, brother Abshishek Tiwari and sister Jaya @ Gudia Tiwari are the defendants in that suit, therefore, at that time when the judgment / decree was passed they being defendants were the judgment debtors and not the father of the petitioner and therefore the argument of learned counsel for the petitioner with reference to Section 50 CPC is wholly misconceived. Moreover, the petitioner along with three others having challenged the aforesaid decree and procured the interim order dated

28.4.2007 whereby they were required to deposit 50% of the decreetal amount and furnish solvent security for remaining 50% to the satisfaction of the executing court within four weeks, cannot be allowed to now circumvent the aforesaid order.

I therefore do not find that the learned executing Court has committed any error in rejecting the application of the petitioner.

The writ petition is accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-